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January 30, 2004

Ms Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

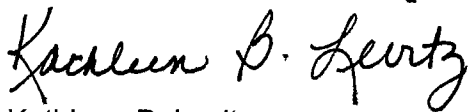
Re: WC Docket No. 03-220

Dear Ms Dortch:

This is to inform you that on January 29, 2003, Barbee Ponder and I, representing BellSouth, met with Brent Olson, Tom Navin, Pam Arluk, Gail Cohen and Marcus Maher of the Wireline Competition Bureau. The purpose of the meeting was to discuss what constitutes "full implementation" for purposes of Section 10(d) of the Communications Act of 1934, as amended. The BellSouth representatives defined the standard that BellSouth asserts the Commission should apply in making this determination and explained how, under that standard, the requirements of Section 10(d) had been met in relation to BellSouth's petition for forbearance from §§ 251 (c)(3), (c)(4), and (c)(6) of the Communications Act of 1934, as amended ("the Act"). The attached document formed the basis for the discussion.

In accordance with Section 1.1206, I am filing this notice and the attachment electronically and request that you please place both in the record of the proceeding identified above. Thank you.

Sincerely,



Kathleen B. Levitz

Attachment

cc: Michelle Carey
Tom Navin
Brent Olson
Pam Arluk
Marcus Maher
Gail Cohen

Christopher Libertelli
Jessica Rosenworcel
Matthew Brill
Scott Bergmann
Daniel Gonzalez

THE FCC AND BELL SOUTH HAVE “FULLY IMPLEMENTED” THE REQUIREMENTS OF SECTION 251(c)

- Section 10(a) provides that the Commission shall forbear from applying any regulation or provision of the Act if the Commission determines that –
 - enforcement of such regulation or provision is not necessary to ensure that the charges, practices, classifications, or regulations are just and reasonable and are not unjustly or unreasonably discriminatory;
 - enforcement of such regulation or provision is not necessary for the protection of consumers; and
 - forbearance from applying such provision or regulation is consistent with the public interest.
- BellSouth’s Petition for Forbearance in Multi Premise Developments (MPDs) seeks forbearance from sections 251(c)(3), (c)(4) and (c)(6) for facilities **used exclusively to serve MPDs**.
- Section 10(d) provides that the Commission may not forbear from applying the requirements of Section 251(c) until it determines that those requirements have been “fully implemented.”
- Through the 271 application process, this Commission ensured that BellSouth has “fully implemented” the requirements of sections 251(c)(3), (c)(4) and (c)(6), thus allowing the Commission to forbear under section 10(a) where the requirements of that subsection are met.

THE 271 APPLICATION PROCESS:

- In reviewing BellSouth's 271 applications for each of its 9 states, the Commission consistently held:

“In order to obtain authorization under section 271, the BOC must ... show that ... it has ‘fully implemented the competitive checklist’ contained in section 271(c)(2)(B)....” E.g., La/Ga 271 Order, Appendix D, ¶¶ 3 & 5.
- The Commission has previously determined that BellSouth has “fully implemented” the competitive checklist in each of its 9 states.
- The Commission’s review of BellSouth’s implementation of the Section 271 competitive checklist entailed a thorough examination of BellSouth’s implementation and compliance with each of the requirements of 251(c)(3), (c)(4) and (c)(6).

UNBUNDLED ACCESS

SECTION 251(c)(3)

Section 251(c)(3) requires BellSouth to provide nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms and conditions that are just, reasonable, and nondiscriminatory.

Checklist Item 2 ensures that BellSouth provides nondiscriminatory access to network elements in accordance with the requirements of Section 251(c)(3) and 252(d)(1).

With respect to this checklist item, the Commission has:

- Ensured that competitive local exchange providers have access to BellSouth's Operations Support Systems (OSS) for pre-ordering, ordering, provisioning and maintenance and repair. In analyzing BellSouth's compliance with each of these OSS functions, the Commission ensured that BellSouth has deployed the necessary systems and personnel to provide sufficient access to each of the necessary OSS functions and is adequately assisting competing carriers. The Commission also examined performance measurements and other evidence of commercial readiness to ensure that BellSouth's OSS can handle the demand.

SECTION 251(c)(3) (con't.)

With respect to this checklist item, the Commission has also:

- Ensured that competitive local exchange providers have nondiscriminatory access to BellSouth's billing functions.
- Ensured that BellSouth has an adequate change management process and has adhered to this process over time.
- Ensured that BellSouth offers "nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms and conditions that are just, reasonable, and nondiscriminatory." Further, the Commission ensured that BellSouth provides UNEs in a manner that allows requesting carriers to combine such elements in order to provide a telecommunications service.
- Ensured that BellSouth offers UNEs at just and reasonable rates as established by state commissions in compliance with the costing methodology adopted by this Commission.

In order to comply with the requirements, BellSouth:

- Has spent over \$2 Billion in order to meet the requirements of 251;
- Tracks and reports on a monthly basis to each State Commission its performance under an average of 75 distinct service quality performance measurements, each subject to significant further disaggregation; and
- Backsliding on performance exposes BellSouth to penalties capped at between 36% and 44% of the Company's net revenue (interstate and intrastate).

RESALE

SECTION 251(c)(4)

Section 251 (c)(4) requires BellSouth:

- To offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers; and
- Not to prohibit, and not to impose unreasonable or discriminatory conditions or limitations on, the resale of such telecommunications service, except that a State commission may, consistent with regulations prescribed by the Commission under this section, prohibit a reseller that obtains at wholesale rates a telecommunications service that is available at retail only to a category of subscribers from offering such service to a different category of subscribers.

Checklist Item 14 – Resale – ensures that BellSouth makes “telecommunications services ... available for resale in accordance with the requirements of section 251(c)(4) and 252(d)(3).

With respect to this checklist item, the Commission has ensured that state commissions within BellSouth’s region have established wholesale rates on the basis of retail rates charged to subscribers for the telecommunications service requested, excluding the portion thereof attributable to any marketing, billing, collection, and other costs that will be avoided by the local exchange carrier.

COLLOCATION

SECTION 251(c)(6)

- Section 251(c)(6) requires BellSouth to provide, on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, for physical collocation of equipment necessary for interconnection or access to unbundled network elements at the premises of the local exchange carrier, except that the carrier may provide for virtual collocation if the local exchange carrier demonstrates to the State commission that physical collocation is not practical for technical reasons or because of space limitations.
- The Commission has ensured that BellSouth has fully implemented the collocation requirements of Section 251(c)(6) as part of its review and consideration of Checklist Item 1 concerning Interconnection. As the Commission has previously held, “[t]he provision of collocation is an essential prerequisite to demonstrating compliance with item 1 of the competitive checklist.” La/Ga 271 Order, Appendix D, ¶20.
- In order to comply with Checklist Item 1, the Commission requires BellSouth to provide shared caged and cageless collocation arrangements as part of its physical collocation offerings as required in the *Advanced Services First Report and Order*, to allow the collocation of all equipment meeting the criteria established in the *Collocation Remand Order*, including allowing cross-connects between collocated carriers, and complying with the principles established for physical collocation space and configuration.
- In order to find full compliance with these collocation obligations, the Commission found that BellSouth had processes and procedures in place to ensure that all applicable collocation arrangements are available on terms and conditions that are “just, reasonable, and nondiscriminatory” in accordance with section 251(c)(6) and the Commission’s implementing rules.
- Further, the Commission reviewed BellSouth specific performance data ensuring the quality of procedures for processing applications for collocation space, as well as the timeliness and efficiency of provisioning collocation space.
- Indeed, BellSouth tracks and reports on a monthly basis to each State Commission its collocation performance under three distinct service quality performance measurements each subject to further disaggregation.
- Backsliding on performance exposes BellSouth to penalties capped at between 36% and 44% of the Company’s net revenue (interstate and intrastate).

SUMMARY

- BellSouth has fully implemented each and every statutory obligation, as well as every rule and regulation promulgated by the Commission, concerning the subsections at issue in BellSouth's MPD forbearance petition. As this Commission has previously concluded on multiple prior occasions, BellSouth has indeed fully implemented Sections 251(c)(3), (c)(4) and (c)(6). Thus, section 10(d) does not bar the Commission from granting the forbearance relief requested in MPDs.
- The Commission should not now create some new interpretation of Section 10(d) that would artificially limit the Commission's jurisdiction to forbear where the requirements of Section 10(a) are otherwise met.
- The fact that the specific requirements imposed upon BellSouth under Sections 251(c)(3), (4) & (6) may change over time does not provide a legitimate basis for finding that those provisions are not "fully implemented."
- Indeed, BellSouth should be subject to *fewer* requirements in the future as facilities-based competition in the local market continues to grow.
- If anything, both this Commission and BellSouth have not simply "fully implemented," but rather have *over* implemented the requirements of Section 251(c) of the Act.